IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2096 of 2000
with
SPECIAL CIVIL APPLICATION No.4184 of 1995
and
SPECIAL CIVIL APPLICATION No.2097 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-
and
Hon'ble MR.JUSTICE N.G.NANDI sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOSHWAMI HARSHADGIR HARMANGIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2096/2000 & 4184/95
   MR PR THAKKAR for Petitioners No. 1-6
   Mr.S.N.SHELAT, ADVOCATE GENERAL with Mr.L.R.PUJARI, A.G.P. for Respondents No. 1-2
   MR MD PANDYA for Respondent No. 3
2. Special Civil Application No. 2097 of 2000
   MR PR THAKKAR for Petitioner No. 1
   Mr.S.N.SHELAT, ADVOCATE GENERAL with Mr.S.P.SEN, A.G.P. for Respondents No.1-2
   MR MD PANDYA for Respondent No.3

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 09/01/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. All these petitions are disposed of by this common Judgment as the common question is involved in all these matters.

2. Dhulabhai Motibhai Patel and 2 others filed writ petition i.e. Special Civil Application No.4184 of 1995 challenging the issuance of notification u/s.4 of the Land Acquisition Act (for short "the Act") dated 30.10.1991 in respect of the land at village Kotali and the subsequent notification issued u/s.6 of the Act dated 2.1.1993 as well as notification u/s.9 dated 11.6.1993.

3. Initially the learned Vacation Judge while issuing the notice on 17.5.1995 granted ad.interim relief in terms of Para : 23(E) of that petition. Later on the matter was adjourned from time to time before other regular Division Benches of this Court with extention of the interim relief. We could see from the order sheet that once i.e. on 22.12.1997 the interim relief was ordered to continue for an indefinite period. However, on 23.3.1998 the Division Bench of this Court while admitting the matter and issuing Rule making it returnable on 31.3.1998 ordered to continue the ad.interim relief granted earlier by this Court till then.

4. Civil Application No.12744 of 1999 came to be filed in that writ petition i.e. in Special Civil Application No.4184 of 1995 on 29.10.1999 praying that ad.interim relief granted earlier by this Court in the main writ petition be extended. In Para : 4 of that Civil Application it has been specifically urged that when the matter was adjourned for the first time on 31.3.1998 through oversight the learned Advocate for the applicant forgot to mention to the Hon'ble Court while granting adjournment to the other side the ad.interim relief granted earlier may be extended till further order. On this it was urged that the opponents were likely to take dis-advantage of this bonafide mistake on the part of the learned Counsel for the applicant and they would like to proceed further with the acquisition

proceeding and declare the award in the matter making the writ petition infructuous. On this premise it was contended that "the applicants say that on the matter being adjourned to a next date, the ad.interim relief is understood to have been extended till further orders." The matter was hurriedly moved before the Division Bench of this Court on 1.11.1999 and it was initially extended upto 3.11.1999 and on 3.11.1999 it was extended till 18.11.1999 meaning thereby ad.interim relief granted earlier which was initially made limited upto 3.11.1999 understood to have continued till then. Surprisingly on 18.11.1999 they have not pressed their application before another Bench and the ad.interim relief granted earlier which was continued till then came to be vacated. On vacation of the said ad.interim relief the Award came to be passed by the Authority on 25.11.1999. Thus, with the passing of the Award main writ petition i.e. Special Civil Application No.4184 of 1995 became infructuous and accordingly it is required to be dismissed.

5. It may be stated that after vacation of the interim relief granted by this Court in main writ petition i.e. Special Civil Application No.4184 of 1995 two more writ petitions came to be filed i.e. Special Civil Application No.2096 of 2000 and 2097 of 2000 by different petitioners through their learned Counsel Shri P.R.Thakkar. In both these petitions only contention is raised by learned Counsel Shri Thakkar for the petitioners that in the instant case there was gross violation of Section 11(A) of the Act inasmuch as the period of 2 years expired in declaration of Award. In support of his submission Shri Thakkar has tried to place reliance upon the following Supreme Court Judgments :

i) 1994 (5) SCC Page 686
ii) 1996 (1) SCC Page 434
iii) 1989 (1) SCC Page 113
iv) 1994 (1) SCC Page 44

6. Before appreciating the aforesaid contentions few relevant facts are required to be stated which are as under :

i) Notification u/s.4 of the Act came to be issued on 30.10.1991 with respect to the land situated at village Kotali.
ii) Notification issued u/s.6 of the Act came to be issued on 2.1.1993.
iii) Notification u/s. 9 came to be issued on 11.6.1993.
iv) Notification u/s.4 for the land situated at

village Amaliyara came to be issued on 16.1.1992 and the notification u/s. 6 of the Act came to be issued on 23.3.1993 for village Amaliyara.

v) Writ petition i.e. Special Civil Application No.4184 of 1995 came to be filed before this Court and interim order with order of notice was passed on it by the learned Vacation Judge on 17.5.1995. The said interim relief was extended from time to time by different Division Benches of this Court. Ultimately, by order dated 23.3.1998 the writ petition was admitted and the ad.interim relief granted earlier was ordered to continue till then.

vi) However, it appears from the record of Civil Application No.12744 of 1999 that while adjourning the matter through oversight ad.interim relief could not be extended. When it had come to the notice of the petitioners of that petition they filed Civil Application and the ad.interim relief was extended on 1.11.199 upto 3.11.1999, later on it continued upto 18.11.1999 and as stated earlier ad.interim relief came to be vacated on the petitioners of that case not pressing that application. Within 7 days thereof i.e. on 25.11.1999 the Award came to be passed.

7. The aforesaid facts clearly shows that if we exclude the interim relief operating in favour of the petitioner of writ petition No.4184 of 1995 then the Award was passed within a period of 2 years. However, the submission of Shri Thakkar was that once the ad.interim relief was not extended on 31.3.1998 by the Division Bench of this Court while adjourning the Writ Petition No.4184 of 1995 then till the interim relief was granted afresh on 1.11.1999 that period should be excluded and if that is so then it is after 2 years. Therefore there was a clear breach of Section 11(A) of the Act. Therefore, this petition be allowed.

8. We are afraid, we cannot accept this contention. All the aforesaid Judgments cited by Shri Thakkar are totally on a different point. It has no application to the facts of this case, therefore, we have refrained ourselves from dealing with it in detail. The facts of the instant case are more than clear. In support of their say the petitioners of writ petition N.2096 of 2000 got the Affidavit of Shri Goswami Purshotamgiri Bechargiri, filed in the petition who was one of the petitioner of Writ Petition No.4184 of 1995. He took totally different stand than what was stated in Civil Application No.12744 of 1999 for seeking extension of

interim relief operating in their favour in their main petition No.4184 of 1995. The statement made by Goswami Purshotamgiri Bechargiri, which is at running Page : 58, is on the face of it is false for which he could have been prosecuted. However, considering the peculiar facts and circumstances of the case we are at present not inclined.

9. Be that as it may. The petitioners of main writ Petition No.4184 of 1995 were very much aware that they had obtained the interim relief and by sheer mistake or the oversight of their counsel it could not be extended, but it was to be understood by one and all including the petitioners and the respondents that the interim relief was continued.

10. In view of above discussion we dismiss the Special Civil Application No.4184 of 1995 as having become infructuous and we also dismiss 2 other writ petitions i.e. Special Civil Application Nos.2096 of 2000 and 2097 of 2000 on merit as it has no case. However, there shall be no order as to costs.

sd/-
(B.J.Shethna, J.)
Date : 9.1.2002 sd/-
(N. G. Nandi, J.)

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